

AMENDED IN SENATE MARCH 27, 2008

SENATE BILL

No. 1490

Introduced by Senator Padilla

February 21, 2008

~~An act to add Section 226.8 to the Labor Code, relating to employment. An act to amend Sections 1174.5 and 1175 of, and to add Section 1174.1 to, the Labor Code, and to add Section 9620 to the Unemployment Insurance Code, relating to employment.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1490, as amended, Padilla. Employment: ~~misclassification of employees as independent contractors.~~

(1) Existing law requires every person employing labor in this state to furnish reports or information to the Industrial Welfare Commission. Existing law requires that person to permit a member of the commission or employees of the Division of Labor Standards Enforcement free access to the place of business or employment of that person to secure information or make an authorized investigation. That person is required to keep a record showing the names and addresses of all employees employed, and keep, for a period of not less than 2 years, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants and establishments. Under existing law, a person who willfully fails to maintain these records or permit a member of the commission or employees of the division to inspect records is subject to a civil penalty of \$500. A person who neglects or refuses to furnish the information requested by the commission, refuses access to his or her place of business, hinders the commission or employees of the division,

or fails to keep any records required by this provision is guilty of a misdemeanor.

This bill would require a person employing labor in this state to provide to an individual hired as an independent contractor, when that individual is hired, a form that includes a notice that the individual has been hired as an independent contractor, a statement explaining the impact that the individual's status as an independent contractor has on his or her tax obligations and eligibility for labor and employment protections, and a notice that the individual may request a written determination from the Employment Development Department as to whether the individual is an independent contractor or employee. The bill would require the person employing labor in this state to maintain, for a period of no less than 2 years, records of the independent contractors hired by that person which include specified information concerning each independent contractor, and to make these records available for inspection by a member of the commission or an employee of the Department of Industrial Relations or the Employment Development Department. The bill would provide that a person who willfully fails to maintain these records or permit a member of the commission or employees of those departments to inspect those records is subject to a civil penalty of \$500. The bill would also provide that a person who neglects or refuses to furnish information requested under this provision, refuses access to his or her place of business, hinders the commission or employees of those departments, or fails to keep any records required by this provision is guilty of a misdemeanor. By expanding the definition of an existing crime, the bill would impose a state-mandated local program.

(2) Under existing law, the Employment Development Department has the powers and duties necessary to administer the reporting, collection, refunding to the employer, and enforcement of taxes required to be withheld by employers.

The bill would additionally require the Employment Development Department to develop a form that includes a notice to an independent contractor regarding the impact that status as an independent contractor has on the individual's tax obligations and eligibility for labor and employment protections, and a notice that the independent contractor may request a written determination from the Employment Development Department as to whether the individual is an independent contractor or employee. The bill would require the Employment Development Department to process a request for a written determination regarding

the employment status of an individual hired as an independent contractor, and to take all steps reasonably necessary to carry out the duties described in these provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship.~~

~~This bill would state the intent of the Legislature to address intentional misclassification of employees as independent contractors.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1174.1 is added to the Labor Code, to*
2 *read:*

3 *1174.1. (a) A person employing labor in this state shall provide*
4 *to an individual hired as an independent contractor, when the*
5 *individual is hired, a form developed by the Employment*
6 *Development Department which includes all of the following:*

7 *(1) A notice that the individual has been hired as an independent*
8 *contractor.*

9 *(2) The factors the Employment Development Department uses*
10 *to determine whether a person is an employee or an independent*
11 *contractor.*

12 *(3) A statement explaining the impact that the individual's status*
13 *as an independent contractor has on his or her tax obligations*
14 *and his or her eligibility for labor and employment protections.*

15 *(4) A notice of the individual's ability under subdivision (c) to*
16 *request a written determination from the Employment Development*
17 *Department as to whether the individual is an independent*
18 *contractor or employee. The notice shall state that the individual*
19 *may make this request telephonically, by mail, or through a Web*
20 *site operated by the Employment Development Department, and*

1 shall include a toll-free number for the Employment Development
2 Department Taxpayer Assistance Center, the mailing address for
3 submitting requests, and the department's Web site address to
4 which a request may be submitted electronically and from which
5 additional information about the request process may be obtained.

6 (b) (1) A person employing labor in this state shall maintain,
7 for not less than two years, records of all independent contractors
8 hired by that person. The records shall include the name of each
9 independent contractor, and his or her address, social security
10 number, and, if applicable, federal tax identification number.

11 (2) A person employing labor in this state shall make the records
12 described in paragraph (1) available for inspection, upon request,
13 by a member of the commission or an employee of the Department
14 of Industrial Relations or the Employment Development
15 Department.

16 (c) An individual hired as an independent contractor may
17 request a written determination from the Employment Development
18 Department, in the form of a letter ruling, as to whether he or she
19 is an independent contractor or employee. The individual may
20 submit the request telephonically, by mail, or through a Web site
21 operated by the Employment Development Department.

22 SEC. 2. Section 1174.5 of the Labor Code is amended to read:

23 1174.5. ~~Any~~A person employing labor in this state who
24 willfully fails to maintain ~~the accurate and complete records~~
25 required by subdivision (c) of Section 1174 ~~or accurate and~~
26 ~~complete records required by subdivision~~ or (d) of Section 1174
27 or subdivision (b) of Section 1174.1, or to allow ~~any~~ a member of
28 the commission or employees of the division to inspect records
29 pursuant to subdivision (b) of Section 1174 or a member of the
30 commission or employees of the Department of Industrial Relations
31 or the Employment Development Department to inspect records
32 pursuant to subdivision (b) of Section 1174.1, shall be subject to
33 a civil penalty of five hundred dollars (\$500).

34 SEC. 3. Section 1175 of the Labor Code is amended to read:

35 1175. ~~Any~~A person, or officer or agent thereof, is guilty of a
36 misdemeanor who:

37 (a) Neglects or refuses to furnish the information requested
38 under the provisions of Section 1174 or 1174.1.

39 (b) (1) Refuses access to his or her place of business or
40 employment to any member of the commission or employee of

1 the Division of Labor Standards Enforcement when administering
2 or enforcing this chapter.

3 (2) *Refuses access to his or her place of business or employment*
4 *to a member of the commission or employee of the Department of*
5 *Industrial Relations or Employment Development Department*
6 *when administering or enforcing Section 1174.1.*

7 (c) ~~Hinders—such~~ *that member, or employee in securing*
8 *information authorized by Section 1174 or 1174.1.*

9 (d) *Fails to keep any of the records required by Section 1174*
10 *or 1174.1.*

11 SEC. 4. *Section 9620 is added to the Unemployment Insurance*
12 *Code, to read:*

13 9620. *The Employment Development Department also has the*
14 *following power and duties:*

15 (a) *To develop a form described in subdivision (a) of Section*
16 *1174.1 of the Labor Code.*

17 (b) *To process a request by an individual and issue a written*
18 *determination, in the form of a ruling letter, as to whether that*
19 *individual is an independent contractor or employee.*

20 (c) *To take all steps reasonably necessary to carry out the duties*
21 *described in Section 1174.1 of the Labor Code.*

22 SEC. 5. *No reimbursement is required by this act pursuant to*
23 *Section 6 of Article XIII B of the California Constitution because*
24 *the only costs that may be incurred by a local agency or school*
25 *district will be incurred because this act creates a new crime or*
26 *infraction, eliminates a crime or infraction, or changes the penalty*
27 *for a crime or infraction, within the meaning of Section 17556 of*
28 *the Government Code, or changes the definition of a crime within*
29 *the meaning of Section 6 of Article XIII B of the California*
30 *Constitution.*

31 ~~SECTION 1. Section 226.8 is added to the Labor Code, to~~
32 ~~read:~~

33 ~~226.8. It is the intent of the Legislature to address intentional~~
34 ~~misclassification of employees as independent contractors.~~